

ORIGINAL

CITY OF SHORELINE HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION OR RECOMMENDATION

APPELLANT: Charles Suvan, Aurora Village Medical Center
Represented by Jeffrey M. Eustis, Attorney at Law

FILE NO.: 1997-01323

APPEALS: Charles Suvan is appealing the City of Shoreline's action to grant a Conditional Use permit for the Costco Unattended Gas Station and the SEPA Threshold Determination of Non-Significance with respect to that permit.

BACKGROUND:

A. Location and Neighborhood: The subject property is located at 1175 North 205th Street. This property is located in the Echo Lake Neighborhood of the City of Shoreline within the Aurora Village Shopping Center, a major regional center. The area across North 200th Street from the subject property primarily consists of medical offices and multi-family developments.

B. The Proposal: Costco Wholesale, the applicant, proposes to construct a self-serve fueling (gas) station on N. 200th Street behind their store in Aurora Village Shopping Center. The station will provide 12 dispensers on three service islands for Costco members only. The service island will be covered by a canopy.

C. Procedural History: The application to construct the proposed gas station was received on June 23, 1997. After several changes to the location of the gas station the application was accepted as complete for review purposes on January 22, 1998. Public notice of the application was issued on February 20, 1998 and the comment period remained open until March 6, 1998. The Development Services Group (DSG) received 35 letters in opposition to the project primarily because of the potential traffic on N. 200th Street and possible health and environmental hazards to the neighborhood.

A Mitigated Determination of Non-Significance (MDNS) was issued on February 18th, 1998, which included specific conditions to prevent adverse impacts to the environment. Following their review of all application and related documents and visits to the site, the DSG issued the Conditional Use Permit on April 7, 1998. Copies of the approval were mailed to the applicant, their agent and all parties of record.

On April 22, 1998, Charles Suvan filed an appeal of both the Conditional Use Permit approval and the SEPA Mitigated Determination of Non-Significance. The appeal (Attachment F) cited numerous issues of concern. An open record public hearing was scheduled to be held before the City of Shoreline Hearing Examiner on Wednesday, June 17, 1998 at 7:00 p.m. in the Mount Rainier Room of the Shoreline Conference Center. Formal notice of the appeal hearing was published in the Seattle Times on June 5, 1998.

A pre-appeal meeting was held by the Hearing Examiner on June 3, 1998 (The meeting was recorded and a copy of the tape is available at the City Clerk's Office). At that meeting it was discussed that the City's appeal procedures provide for the Hearing Examiner to hear and make decisions on SEPA appeals; however the City Council makes decisions on Conditional Use Permit appeals. In this case, the Hearing Examiner will hold the open record hearing on both appeals, making a decision on the SEPA appeal and making a recommendation to City Council on the Conditional Use Permit Appeal. The City Council will hold a closed record hearing and make the decision. None of the parties objected to this procedure. Information related to the hearing from the Appellant, Applicant and City was to be exchanged by June 12, 1998.

D. SEPA: The City of Shoreline issued a preliminary MDNS on February 8, 1998 under the provisions of WAC 197-11-350. In issuing the MDNS, the City relied on the proposal complying with all relevant health and safety regulations, including:

- Uniform Fire Code (UFC) arts. 52 and 59 (1994), supplemented with National Fire Prevention Association (NFPA) sections 30 and 30A (1996);
- RCW and WAC 173-360 (State regulation of underground storage tanks);
- RCW Title 70 (State Clean Air Act); and
- CFR 112 (spill prevention and control regulations promulgated under section 311 (J)(1)(C) of the Federal Clean Water Act).

The following mitigation were required of the applicant in order to address the following adverse environmental impacts:

1. Earth: Prior to final installation of the proposed gasoline storage tanks, the applicant shall submit a report from an appropriately qualified engineer certifying that the site has been prepared in accordance with the recommendations made in the June 1992 report produced by Geo-Engineers.

2. Landscaping:

A. Prior to the review or issuance of any site development permits, the applicant shall prepare and submit to the Development Services Group a landscaping plan that provides for the construction, planting, and irrigation of landscaped areas immediately adjacent to all proposed access points (to and from N. 200th Street) that will serve the proposed facility. The landscaping plan will use plants identified as suitable for this kind of location and are compatible with existing street trees.

B. If all proposed landscaping areas are to be automatically irrigated, the applicant shall post a one (1) year bond for maintenance of the plantings. If the proposal does not provide for automatic irrigation, the applicant shall post a two (2) year bond to cover the full replacement of all landscaping plants.

3. Transportation - Site Access: In accordance with the mitigation recommendation made in the Traffic Impact Study submitted as part of the SEPA review materials, the applicant shall add a southbound left turn lane to the North 200th Street west access. This improvement will be located entirely within the Aurora Village development.

E. Conditional Use Permit: The City issued the Conditional Use Permit based on the Shoreline Zoning Code, Section 18.44.040 on April 7, 1998, with the following conditions:

1. All pump islands shall be a minimum of 25 feet from the street (N. 200th St.) property line. Relocate all the proposed pump islands to meet the required setback.

2. Install an eight (8) foot wide sidewalk on N. 200th Street and relocate the street trees to the curb edge. Engineering plans shall be submitted for the street improvements. The street trees shall be selected from the City's list of approved trees.

3. Decrease western driveway approach to 35 feet to allow a maximum of two (2) vehicles to access the facility at one time.

4. Install a five (5) foot wide raised sidewalk from N. 200th St. to the principal entrance to Costco Warehouse Store.

5. Augment the landscaping at the corners of both shopping center entrances and N. 200th St. and install landscaping along all islands that separate the gasoline fueling facility and lanes of travel. All landscaping shall be approved by DSG.

6. Relocate or disguise the traffic controller at the northwest corner of the site with landscaping and/or another feature that would enhance the new landscaping.

7. No new gas pumps can be added without another conditional use permit.

8. The applicant shall comply with all SEPA conditions stated in the Mitigated Determination of Non-Significance (MDNS) issued on 2/18/98 and attached to this document.

9. The applicant shall obtain a building permit and a tank permit within 12 months of the effective date of the conditional use permit. As a part of the building permit review, a drainage review for water quality shall be approved by DSG.

F: Appeal: By letter dated April 22, 1998, Charles Suvan, Aurora Village Medical Center, 1207 N. 200th Street, #108, appealed the Conditional Use Permit and the Mitigation Declaration of Non-Significance (MDNS) stating the following grounds for appeal:

1. The seven items listed for the appeal with respect to the Conditional Use Permit were that the City of Shoreline erred in:

- concluding the conditional use is designed in a manner which is compatible with the character and appearance with the existing, or proposed development in the vicinity of the subject property. The proposed conditional use is incompatible with existing approved mixed uses for a predominately commercial retail and multiple housing.

- concluding the conditional use is not in conflict with the health and safety of the community. The proposed use is of such large magnitude as to pose an immediate danger between vehicle and pedestrian traffic, which danger has not been adequately addressed by the City. The proposed use contemplates an unattended self-service facility, creating an extreme potential fire and/or hazardous waste danger to the health and safety of the community. The proposed use creates the potential for a significant hazardous waste threat to the health and safety of the community, with respect to both humans and the natural environment. The natural environment threat exists to area water sources, and animal and marine. The City of Shoreline failed to adequately address the potential for hazardous waste migration from the subject property via stormwater drainage, spills, or leakage of underground storage tanks ("UST's").

- concluding the conditional use is such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood. The City of Shoreline failed to address mitigative measures to protect pedestrian traffic out the side at the signalized intersection by the park and ride. The City of Shoreline based its conclusions on insufficient traffic studies, and formulated insufficient and conclusory traffic impact conclusions. The City of Shoreline failed to consider traffic study information involving the main traffic intersections within the affected area. The City of Shoreline failed to require sufficient mitigative steps to appropriately minimize the immediate danger between vehicle and pedestrian traffic.

- concluding the conditional use will not adversely affect public services to the surrounding area or conditions can be established to mitigate adverse impacts on such facilities. The City of Shoreline failed address heightened requirements for fire monitoring and fire protection, and stormwater drainage monitoring and stormwater drainage protection. The City of Shoreline failed to make any determinations with respect to the effects on public services presently serving the affected area surrounding the property.

- failing to conclude that the conditional use constitutes a public nuisance.

- concluding the proposed land use is compatible with existing uses and complies with all criteria for a conditional use permit as stated in Shoreline Municipal Code, Title 18, Chapter 18.44.

- failing to impose such reasonable conditions for approval of the conditional use as would adequately address and resolve the significant issues addressed in Sections 1-6 of the grant of conditional use portion of this appeal.

2. The three items listed for the appeal with respect to the SEPA Mitigated Determination of Non-Significance (MDNS) were that the City of Shoreline erred by:

- concluding the proposal will not have a probable significant adverse impact on the environment and that an environmental impact statement is not required under RCW 43.21C.030.(2)(c). The proposed use creates the potential for a significant hazardous waste threat to the health and safety of the community, with respect to both humans and the natural environment. The natural environment threat exists to area water sources, and animal and marine life. The City of Shoreline failed to adequately address the potential for hazardous waste migration from the subject property via stormwater drainage, spills, or leakage of underground storage tanks ("UST's").

- failing to consider methods to minimize means for remediation of hazardous waste spills occurring on or in the subject property, or for hazardous waste migration to emanate from the subject property.

- failing to impose adequate mitigation requirements as would reasonably and adequately address and resolve the significant issues addressed in Sections 1-2 of the MDNS portion of this appeal.

PUBLIC HEARING:

On June 17, 1998, the Hearing Examiner held a public hearing on the appeals. The hearing was opened at 7:00 p.m. in the Mount Rainier Room of the Shoreline Conference Center and was closed at 10:35 p.m.

At the beginning of the public hearing, the Hearing Examiner indicated that he had visited the site on two occasions (during the morning and at evening peak hour). He noted that he had held a pre-appeal hearing meeting with the City, applicant and appellant. He stated he had reviewed the record. Each witness was asked to affirm that the information they would provide was true.

Testimony was offered at the public hearing by the City of Shoreline, the appellant, the applicant and Neighbors and Shoreline residents and business owners. Testimony was offered as follows:

City of Shoreline:

Bruce Disend, City Attorney
Anna Kolousek, Director of the Development Services Group

Charles Suvan, Appellant:

Jeffrey M. Eustis, Attorney for Mr. Suvan
Michael McCaffrey, Tenant, Aurora Village Medical Center
Tim Hamilton, Consultant to the petroleum industry

Costco Wholesale, Inc., Applicant:

Roger Pearce, Attorney, Costco
Patrick J. Mullaney, Attorney, Foster Pepper Shefelman
Jay Grubb, Principal Engineer, Barghausen, Inc.
Kathy Nishihira, Costco Wholesale Real Estate Project Manager
Torsten Lienau, PE, Entranco, Inc.

Residents and Business Owners

Rambir Singh
Harry Yourist

Testimony of the City of Shoreline emphasized that gas stations are a permitted use and that the requirement for a conditional use permit was applied as an interim measure while the City was reviewing and adopting a new Comprehensive Plan. It was noted that all of the criteria for a Conditional Use Permit has been met and that appropriate mitigation through SEPA had been applied to respond to traffic and health and safety issues raised in public comments.

Michael McCaffery, witnesses for the appellant, emphasized the increasing amount of traffic on N. 200th Street and at the intersection with Aurora. He submitted photographs (Exhibit I) illustrating the traffic backup at the intersection.

Tim Hamilton responded to a number of questions from Mr. Jeffrey Eustis regarding the conclusions in Hamilton's report (Exhibit G) on Costco's marketing of gasoline. It was noted that Mr. Hamilton is not a traffic engineer, but based on marketing aspects of gas stations he felt that the amount of gasoline estimated to be sold at this station would generate significantly more traffic than that used in the Entranco Traffic Impact Study prepared for Costco. He also felt that the use of the 72% figure for people who would also shop at Costco was high. He also felt ITE standards should be used consistently throughout their report.

In cross examination by the City Attorney and Costco's attorney it was basically determined that Mr. Hamilton's approach was not a traffic analysis, but estimates based on industry standards for marketing of gasoline. It was further determined that he did not have internal Costco sales data upon which to base his estimates.

Jay Grubb testified for the applicant that the design for the gas station meets or exceeds all regulatory and safety standards for gas stations (Exhibit D) and for seismic zone construction. He noted that there are numerous safety features built into the design and the operations manual. In cross examination it was determined that the closest attendant would be about 500 feet away in the store with a video monitor.

Kathy Nishihira responded to why Costco had used the four (4) gas stations in the survey - similar facility size and demographics; that the market penetration in those areas was actually higher than Puget Sound; that they anticipated about 400,000 gallons of gas per month; that they figured 13 to 14 gallons per average customer; and that membership did not appear to increase due to having a gas station. She noted that although this facility will displace 60 parking spaces, Aurora Village still exceeds City parking standards. Cross examination focused on other Washington facilities and internal data.

Torsen Lienau, traffic engineer, Entranco, reviewed their methodology using information from Costco and indicated that it resulted in higher traffic estimates than if they had used the ITE standards. He indicated that there is no drop from the existing Level of Service (LOS) at intersections impacted by this proposal; however, it might increase the delay slightly. He noted that applying the methodology utilized by Mr. Hamilton on the estimated number of gallons pumped and the actual Costco figures for gallons per vehicle the resulting peak hour figure is very consistent with what was used in the traffic impact study. Cross examination focused on the methodology used. It was determined that the 72% customer figure was not validated by separate research. There was a question about the type of vehicle mix used in determining the amount of time required to fill up. Mr. Eustis objected to the introduction of additional traffic information. The Hearing Examiner overruled the objection indicating that they were in response to issues raised in Mr. Hamilton's report.

Residents and Property Owners

Rambir Singh expressed concern that the small gas stations in the vicinity would be put out of business and that many employees and their families would be affected.

Harry Yourist requested that the permit be denied to protect the small businesses in the area.

The appellant and the applicant summarized their points related to the appeal.

Mr. Eustis felt the City had erred by not requesting the additional data to confirm the traffic analysis; that there was inadequate consideration of the impact of the proposal on vehicular and pedestrian traffic; that there is conflict with health and safety considerations in an unattended facility that had not been addressed.

Mr. Pearce noted that this site is a regional business center where the gas station is a permitted use. He noted that the facility exceeds all applicable standards for construction and operation of

gas stations. He noted that the traffic impact would be minimal, and that the analysis presented by the appellant was exaggerated and not based on standard engineering standards. He further noted that the appellant had not submitted substantive information related to other items listed in the appeal.

FINDINGS, CONCLUSIONS AND DECISION:

I. FINDINGS:

A. The primary issues related to these appeals are whether the City of Shoreline Development Services Group erred in issuing a Conditional Use Permit and in concluding that the proposal will not have a probable significant adverse impact on the environment and that an environmental impact statement would not be required under RCW 43.21C.030 (2) (c).

B. The rules of procedure adopted by the City of Shoreline for appeals to the City Council and the Hearing Examiner place the burden on the appellant for establishing that the decision is not supported by the preponderance of the evidence.

C. A remotely attended gas station is permitted as a matter of right in the underlying Regional Business (RB) zone and is subject to a conditional use permit only because the site is subject to the Aurora Corridor Special District Overlay.

D. The City conducted an environmental analysis of the proposal and concluded that it would not have a probable significant adverse impact on the environment. On February 18, 1998 they issued a Mitigated Declaration of Non-Significance which contained three (3) mitigations dealing with assuring that the installation had been prepared in accordance with plans, landscaping at the access points and provision of a left turn lane to the N. 200th Street west access.

E. The City analyzed the criteria for approval of a Conditional Use Permit and issued a decision approving the project on April 7, 1998. That decision for approval contained 9 conditions addressing the design and landscaping of the gas station, provision of traffic and pedestrian improvements on-site and along N. 200th Street, and monitoring of drainage improvements.

F. The City has identified and relied on the compliance of this project with all relevant health and safety regulations related to building and fire codes, underground storage tanks, and State and Federal clean air and clean water acts.

G. The appellant provided an analysis of potential traffic impact based on a review of marketing concepts applicable to Costco. This report questioned the conclusions of the Traffic Impact Study prepared by the applicant and used by the City for both the Conditional Use Permit

and the SEPA review. The appellant's analysis was based on estimates of the amount of gas pumped per month and general industry standards for the amount of gasoline purchased per customer. Information provided by the applicant shows that the monthly estimates which were used were high compared to comparable Costco facilities, and that the gallons purchased per customer were low. When the appellant's methodology was performed using the applicant's figures, the resulting figure was 282 vehicles per hour as compared to the 268 trips in the p.m. peak hour used in the Traffic Impact Study.

H. The applicant has provided additional information on customer survey results, updated traffic analysis, Emergency Response and Management Plan, and a comparison of the Costco design related to Washington State design requirements. A site visit by Mr. Lienau to the Southcenter Costco during the p.m. peak hour observed 240 trips as compared to the 268 used in the analysis for the City of Shoreline.

I. The appellant has questioned the safety of a remotely attended gas station and the potential for fire and hazardous waste danger.

II. CONCLUSIONS:

A. The Hearing Examiner has jurisdiction to consider and to decide the issues presented related to the SEPA appeal.

B. The Hearing Examiner has jurisdiction to consider and to recommend to the City Council for a decision on the issues presented related to the appeal of the Conditional Use Permit.

C. On the issues of the appeals, the appellant has the burden of establishing that the recommendation or decision is not supported by the preponderance of the evidence. The information provided by the appellant or the questions asked at the appeal hearing focused primarily on two issues:

- the adequacy and accuracy of the Traffic Impact Study supplied by the applicant which was concluded by the appellant to significantly underestimate the number of daily trips, thereby inadequately analyzing the impact on the neighborhood, transportation system and pedestrian safety; and,
- the fact that an unattended facility with a remote monitor creates an extreme potential for fire and/or hazardous waste danger to the health and safety of the community.

D. The methodology used by the City in their traffic analysis is based on accepted engineering methods and standards. Utilizing the figures generated by Costco and applying the methodology in Mr. Hamilton's report, the number of trips generated are generally consistent. No error was made by the City in its analysis and conclusions and appropriate mitigating measures or conditions were applied relative to vehicular and pedestrian safety issues.

E. Although the appellant has questioned the safety of a remotely monitored gas station, no substantive information was provided relative to higher incidences of fire or hazardous waste spills. The applicant appears to have provided adequate safety features at the site. The City did adequately consider the potential impacts on the health and safety of the community, including its potential to be a public nuisance, and made adequate provision to assure appropriate regulations were met.

F. The City of Shoreline has identified numerous regulations for gas station facilities which must be met and has made provision for monitoring to assure they are installed per the regulation. The applicant has testified that this facility meets or exceeds all applicable regulations. The City did not error in its conclusions and did apply reasonable mitigations and conditions.

G. The City of Shoreline reviewed the criteria for a Conditional Use Permit and were correct in their conclusion that this proposal meets the criteria and the City imposed reasonable conditions and mitigations to resolve any identified issues.

H. The City of Shoreline's environmental analysis was appropriate; their conclusion that the proposal would not have a probable significant adverse impact on the environment was correct; and the mitigations along with the conditions on the Conditional Use Permit adequately address the identified issues.

III. DECISION AND RECOMMENDATION:

A. Based on the foregoing findings of facts and conclusions, the appeal of the SEPA Determination of Non-Significance is denied.

B. Based on the foregoing findings of facts and conclusions, it is recommended to the Shoreline City Council that the appeal of the Conditional Use Permit be denied.

EXHIBITS:

Exhibit A Appeal of Costco Warehouse
 Submitted by Charles Suvan
 Dated April 22, 1998
 Filed with City Clerk April 22, 1998

Exhibit B Letter from Hearing Examiner to Pre-Hearing Conference
 parties of record (6/3/98)
 Dated June 4, 1998
 Faxed to parties of record on June 4, 1998

Exhibit C Staff Report to the Hearing Examiner
 Submitted by Paul MacCready, Planning and Development Services
 Department, City of Shoreline
 Not dated - Received in City Clerks Office on June 8, 1998

Exhibit D Applicant Witness and Exhibit List
 Submitted by Foster Pepper et al
 Filed with City Clerk June 12, 1998

Exhibit E Aurora Village Costco Gas Station Supplemental Analysis for
 Access to Aurora Village
 Entranco Project 97809-14
 Submitted by Foster Pepper et al for applicant
 Filed with City Clerk June 15, 1998

Exhibit F Appellant Witness List
 Submitted by Jeffrey Eustis, Attorney for appellant
 Received in City Clerk's Office June 15, 1998

Exhibit G Review of Marketing Concepts
 Prepared Tim Hamilton for appellant
 Received in City Clerk's Office June 15, 1998

Filed at the Hearing:

Exhibit H Pre-hearing Brief
 Submitted by Foster Pepper et al for applicant

Exhibit I Three photographs of subject site
 Submitted by Mike McCaffrey for the appellant

Exhibit J Traffic Analysis
 Submitted by Entranco Eng. for applicant

Exhibit K Letter in support of appellant
 Submitted by Harry R. Yourist

PARTIES OF RECORD:

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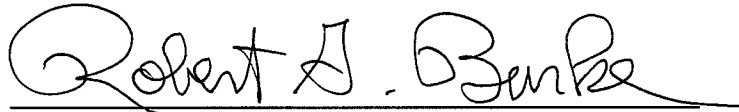
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Entered this 1st Day of July, 1998. The decision of the Hearing Examiner on the SEPA Appeal shall be the final decision on any appeal.

A handwritten signature in cursive script, reading "Robert G. Burke", written over a horizontal line.

Robert G. Burke, Hearing Examiner

APPEAL:

An appeal of the Hearing Examiner's decision is governed by RCW 43.21C.075, the appeal section of SEPA statutes. Under this provision an appeal of the environmental determination must be combined with an appeal of the underlying governmental action.